Supreme Court, U.S.
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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

KENNETH EARL CAUDLE, JR.,
Petitioner,
v.
State of CALIFORNIA,
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEAL FOR THE STATE OF CALIFORNIA, FIFTH APPELLATE DISTRICT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

DOES IT VIOLATE FIFTH AND SIXTH AMENDMENT GUARANTEES TO TRIAL BY JURY AND DUE PROCESS OF LAW FOR A TRIAL COURT TO OPENLY ACKNOWLEDGE AND PRACTICE A POLICY THAT INDUCES AN ACCUSED PERSON TO WAIVE HIS RIGHTS, CHANGE HIS NOT GUILTY PLEA AND ACCEPT A MITIGATED, CONCURRENT SENTENCE IN APPREHENSION OF THE IMPOSITION OF AN INDICATED AGGRAVATED, CONSECUTIVE TERM OF IMPRISONMENT IF HE PROCEEDS WITH A JURY TRIAL AND IS FOUND GUILTY OF THE CHARGES?

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1995

KENNETH EARL CAUDLE, JR.,

Petitioner,

v.

State of CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari to the Court of Appeal For the State of California, Fifth Appellate District

Kenneth E. Caudle, Jr., respectfully petitions for a writ of certiorari to review the judgment of the Court of Appeal for State of California, Fifth Appellate District.

Opinions Below

The opinion of the Court of Appeal (*App. A, infra*),denial of rehearing (*App. B, infra*) and Supreme Court of California denial of review (*App. C, infra*) are not published decisions.

Jurisdiction

The Court of Appeal entered its judgment on March 23,1995 (*App. A, infra*), and jurisdiction of this Court is invoked under 28 U.S.C. section 1257.

Constitutional Safeguards Involved

The Constitution of the United States, Fifth and Sixth Amendments, provide that an accused person shall enjoy the right to a speedy, public jury trial, which shall not be denied without due process of law.

Statement

On February 10, 1994, after a jury had been sworn, petitioner entered pleas of "no contest" to charges that he molested his daughter. Petitioner, who adamantly denied culpability from detention to trial, was informed by the trial court the day of jury selection that

if he proceeded to trial and the jury found him guilty of the charges the court would in all probability impose the maximum term (17 years, 4 months) of imprisonment, whereas if he changed his not guilty pleas before exercising his right to have a jury decide the case, the court would impose the mitigated term (6 years) of imprisonment. Petitioner's application to withdraw his pleas on the ground his constitutional rights were violated by coercive trial court practices was denied, and he has exhausted his review remedies in the courts of the State of California.

A. Procedural and Factual Background

Petitioner was arraigned November 15, 1993 in Tulare County Municipal Court for California, on a complaint filed November 1, 1993, alleging that from July 6, 1991 - July 12,1992, he ommitted continuous sexual abuse upon his natural daughter, Kimberly Costa, in violation of California Penal Code section 288.5; he was also charged with two separate molestation violations of section 288(c), in November, 1992 and January, 1993; each charge alleged a violation of a position of trust. (Cal.Penal Code, sect.

1203.066(a)(9).) Petitioner entered pleas of not guilty to all charges and denied the allegations.[1]

Petitioner retained private counsel, was held to answer on charges December 12, 1994, and an information was filed December 22. Petitioner was arraigned in Superior Court for Tulare County, December 23, he entered pleas of not guilty and denied the allegations, and bail was reduced from $100,000 to $30,000.

The cause was set for trial February 7, 1994. At pre-trial conference on January 31, 1994, petitioner refused to withdraw his not guilty pleas and confirmed the trial date; on February 3, 1994, trial was continued to February 9, 1994. At the pretrial conference, the court indicated the mitigated term (six years) in state prison, but petitioner rejected the "plea indication."

On February 9, the case was assigned for trial, and at 10:45 a.m., a discussion about **in limine** motions occurred in open court. At a time prior to general **voir**

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1 Petitioner, who had never been arrested before, gave a full, taped statement to Tulare police officers, denying his daughter's accusations, made the same day he had called police to report her as "out of control," at his estranged wife's request; he has no prior criminal record,and voluntarily submitted to a polygraph exam,which he passed.

dire of prospective jurors, and without the court reporter, a discussion occurred with both counsel, petitioner, and the trial court, in which the court explained the maximum punishment to petitioner -- in excess of seventeen years in state prison -- and indicated the "strong likelihood" that he would receive such a punishment if a jury found him guilty as charged. If, however, petitioner changed his pleas, the court promised it would abide by the pretrial judge's indication and impose the mitigated term (six years) in state prison on California Penal Code, section 288.5, and concurrent sentences on the additional charges of violating section 288(c).

Petitioner and his trial attorney discussed the indication from the court before jury selection on February 9, but petitioner continued to protest his innocence, and in the afternoon of February 9, 1994 a jury was selected.

On the morning of February 10, 1994, petitioner and his attorney again met with court and prosecutor and discussed the court's indicated sentence, and the probable punishment if convicted by the jury, i.e., aggravated, consecutive sentences in prison. At

approximately 11:00 a.m., February 10, Caudle appeared in open court before the jury and withdrew his not guilty pleas in order to plead *nolo contendre* pursuant to People v. West 3 Cal.3d 595, 604, 91 Cal.Rptr. 385 (1970).

Upon application, accompanied by sworn affidavits, and the prosecutor's concession that the trial court's statements to petitioner about potential punishment had been "inflexible," the court proceeded to hear the application to withdraw the pleas.

The trial court inquired at the outset of the plea-withdrawal hearing, whether "the Court [should] have engaged in this conduct, and was it improper for the Court to engage in this conduct? " (RT 4/4/94, p. 22: 16-18.) It acknowledged a policy of giving defendants an "indicated sentence" of "the probable downside risk of going to trial...," but questioned whether the practice violated any constitutional rights. (RT 4/4/95, p.18:9.)

In point of fact, the record of what the jury was informed by the trial court after the plea on February 10, 1994, is the best evidence of what the court threatened to do to petitioner in off-the-record discussions prior to his change of plea:

"Is it fair to him? Well, he's pled guilty pursuant to People versus West, which is a doctrine that says that, 'I understand I'm pleading guilty and I'm going to take every hit that the Court's going to give me for pleading guilty. But I can't take the risk of going to trial on this, because if I'm found guilty, I think Judge Broadman's going to give me 17 years and four months. And, therefore, it's better for me to do six years, knowing that I'm going to do six years, rather than take the risk of doing 17 years and four months.'

Because that's what he thinks I'm going to do to him, because that's the most I could do to him. And that's what he thinks is a probable outcome if he were convicted." (RT 2/10/94, pp. 7-8.)

The "probability" exercising the right to trial would lead to increased punishment was redoubled a few moments later in the trial court's comments to the jury:

" [B]ecause he doesn't want to risk you folks finding him guilty of 17 -- of the charges and me sending him to prison for 17 years and four months." (RT 2/10/94: pp. 9-10.)

Moreover, the court below accepted petitioner's factual

recitation in support of his application to withdraw the pleas during arguments at the hearing:

> " The most important factual thing is that, from my viewpoint, he says he felt intimidated because he felt that the most probable sentence if he went to trial and was found guilty was 17 years, and he felt pressure as a result of that.
>
> I can't dispute that you felt pressure as a result of that. Only thing I can tell you is that I didn't tell you were for certain going to get 17 years, four months, but I told you if you were convicted it was most probable that's what you would get, based on what I understood to be the facts. But, as I said before, I didn't know what all the facts were." (RT 4/4/94, p. 8: 7-20.)

Further, in the mind of the prosecutor, there was little doubt about the import of the trial court's words to petitioner; when the trial court asked the prosecutor whether it had been "inflexible" in its indication to petitioner of the aggravated, consecutive sentences, he responded: "I think that language that's been addressed here that there was a strong possibility or probability that he could receive the maximum punishment was

made very clear." (RT 4/4/94: 24: 17-20.) And at the time the court denied the motion to withdraw the pleas, it admitted: "So it is true without question that I told you that if, in fact, everything went the way it was explained to me, you were going to probably get the maximum term." (RT 4/4/94: 35: 16-19.)

Nonetheless, the trial court denied the application to withdraw the pleas but signed a Certificate of Probable Cause, April 4, 1994, permitting direct review. Notice of Appeal was filed April 7, 1994; the decision of the Court of Appeal was filed March 23, and rehearing denied April 6, 1995. The Supreme Court of California denied review on June 14, 1995. Petitioner has been free on bail pending review.

B. The Rights at Issue

Petitioner's guarantee to a trial by jury was needlessly chilled by the apprehension of greater punishment for the exercise of his fundamental right, and due process should have protected him from coercion of "no contest" pleas. Instead, the trial court's admitted policy of indicated maximum punishments prior to trial, and the actual course of events in this

case, reveal a practice that violates due process of law and the right of the accused to present his defense to a jury of his peers.

Petitioner filed a timely application to withdraw the pleas with supportive affidavits, no evidence in opposition was presented, and the trial court denied the application, April 4, 1994. The Court of Appeal for the Fifth Appellate District of California affirmed, holding that "a waiver of the right to jury trial is valid so long as it was voluntarily, knowingly and intelligently made, even though fear of the maximum sentence encouraged the waiver. (Brady v. United States (1970) 397 U.S. 742, 747-753.) " (*App., infra*, p. 9.)

Petitioner sought rehearing on the ground that this Court had specifically noted in *Brady, supra,* p. 751, ftn. 8, "there is no claim that ... the trial judge threatened Brady with a harsher sentence if convicted after trial in order to induce him to plead guilty." Direct and indirect judicial threats and inducements were reproved in *Brady* and other decisions from this Court and federal circuit courts examining similar acts, as argued by petitioner below. (**Ibid.**) The Court of Appeal denied rehearing, April 6, 1995, and Supreme Court of

California denied review, June 14, 1995.

Unlike Brady, at no time did petitioner acknowledge guilt, and in fact, his affidavit on file explained that he changed his pleas "solely because I was frightened of the risk that if the jury found me guilty of the charges alleged I would in all likelihood be imprisioned in excess of seventeen years for crimes I did not commit." Nonetheless, petitioner's statement of concern over whether his daughter's prior sexual activity would be admissible at trial deflected the courts below from examination of trial court responsibility to refrain from indicating a retaliatory punishment for exercising the right to a jury determination. (*App. A, infra*, pp. 6-7.) Petitioner's "incredible dilemma" of choosing between exercising his right to trial, or waiving it in order to avoid the maximum allowable punishment, was no less violative of his rights because he may have coextensively taken account of another legitimate factor. Petitioner respectfully submits that his constitutional rights to due process of law and to a trial by jury were needlessly chilled by judicial acts that superceded his subsidiary fears about the impact evidentiary rulings might have on his defense.

Reasons for Granting the Petition

California has a determinate sentencing scheme that allows trial judges wide latitude in considering factors in mitigation and aggravation before passing judgment upon a convicted person. At minimum, an indication of the aggravated term of imprisonment, and consecutive sentencing, as was done below on the day of trial, ignores the policy mandates of California Penal Code, section 1170.1(a)(1), and Judicial Council of California Rules of Court 421, 423, 425. Under every circumstance individualized sentencing choices" must be accompanied by a statement of reasons, and only in the most aggravated of cases and worst offenders, could imposition of the aggravated term of imprisonment pass scrutiny on appeal. (Cal. Penal Code, section 1170(c); Rule 406(b)(5); People v. Walker 83 Cal.App.3d 619, 622, 148 Cal.Rptr. 66 (1978).) Imposition of consecutive sentences would require factors in addition to those used to aggravate the base term. (People v. Bejarano 114 Cal.App.3d 693,

704-705, 173 Cal.Rptr. 71 (1981).)[2]

It is established that under Fifth and Sixth Amendment analysis that "due process forbids convicting a defendant on the basis of a coerced guilty plea. (Citation.) " (United States v. Jackson 390 U.S. 570, 582 ftn 20, 88 S. Ct. 1209 (1968).) Judicial acts that impact the basic rights to due process of law, self-incrimination, and a trial by jury "cannot be pursued by means that needlessly chill the exercise of basic constitutional rights. (Citations.) " (**Id.**, at p. 582.)

The essential principle is stated in **United States v. Jackson, supra,** wherein this Court held it violated defendant's fundamental right to trial by jury to expose him to capital punishment for aggravated kidnapping only if defendant selected trial by jury; if he pleaded guilty or waived jury, then he was not exposed to the death penalty. The "chilling" effect on the right to trial by jury necessitated reversal of judgment and the

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[2] Petitioner's lack of record alone would be a significant factor in mitigation under Rule 423((b)(1), which would make it difficult to impose the aggravated term of imprisonment in most cases. Certainly the fact that both the pretrial and trial judges indicated a mitigated term of imprisonment in plea discussions implies that petitioner and the crime were not **actually** "aggravated."

invalidation of the legislation. Similarly, in United States v. Wiley, 278 F.2d 500, 503-504 (1960, 7th Cir.) citing Yates v. United States, 356 U.S. 363, 366, 78 S.CT. 766 (1958), the review court recognized inherent supervisory power to correct abuses in the administration of justice by sentencing courts; in setting aside the sentence imposed by the lower court, the **Wiley** Court wrote:

> "Our part in the administration of federal justice requires that we reject the theory that a person may be punished because in good faith he defends himself when charged with a crime, even though his effort proves unsuccessful. It is evident that the punishment imposed by the district court on Wiley was in part for the fact that he availed himself of his right to a trial, and only in part for the crime for which he was indicted."

California courts appear to accept the federal interpretation of Fifth and Sixth amendment protections in this context, as stated in People v. White, 16 Cal.3d 791, 802, 129 Cal. Rptr. 769 (1976). (See also, People v. Henderson, 60 Cal.2d 482. 497, 35 Cal.Rptr.77 (1963), an oft-cited case for the principle that greater

punishment cannot be imposed for the exercise of fundamental rights.) However, the "incredible dilemma" of choosing between suffering an erroneous conviction to stand unchallenged, or appealing therefrom with fear of suffering a greater punishment for reversal, is no less a dilemma in the assertion of a good faith defense before a jury, and receiving benefits of individualized sentencing guidelines, or facing unbridled, invidious promise of maximum punishment for the exercise of the right to trial by jury. (**Ibid**.) Petitioner can only surmise from the record in this case that California courts now ignore this Court's prior decisions and it is an important principle at stake that must be reaffirmed by granting certiorari here.

CONCLUSION

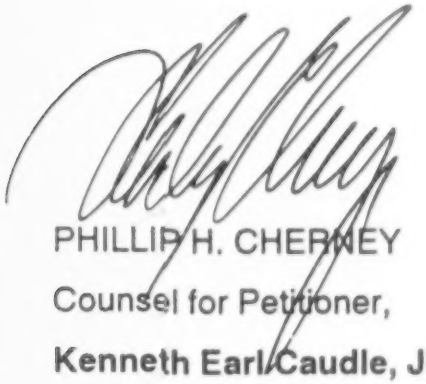
Petitioner cannot claim that his petition presents an extraordinary issue of great public moment, but he believes the record demonstrates that his personal right to trial by jury was eviscerated by a coercive judicial practice offensive to fundamental notions of due process of law. Petitioner submits the California Court of Appeal for the Fifth Appellate District misapplied

Brady v. United States, supra, to the specific facts of this case, and he has exhausted his review remedies in the courts of the State of California.

Petitioner requests that certiorari be granted to rectify clear abuses of basic constitutional rights, and, ultimately, in order to restore his not guilty pleas so that he may proceed to a trial on the merits without fear of reprisal.

DATED: August 7, 1995

Respectfully submitted,



PHILLIP H. CHERNEY
Counsel for Petitioner,
Kenneth Earl Caudle, Jr.

///

APPENDIX "A"

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA,) Plaintiff and Respondent,)	
v.	MARCH 23, 1995 F021357
	(Sup. Ct 34511)
KENNETH E. CAUDLE, JR., Defendant and Appellant)	O P I N I O N

APPEAL from a judgment of the Superior Court of Tulare County. Howard R. Broadman, Judge.

Phillip H. Cherney for Defendant and Appellant.

Daniel E. Lungren, Attorney General, George Williamson, Chief Assistant Attorney General, Robert R. Anderson, Assistant Attorney General, and Wanda Hill Rouzan, Deputy Attorney General, for Plaintiff and Respondent.

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Defendant appeals from conviction of violation of Penal Code sections 288, subdivision (c) and 288.5, arguing the denial of this motion to withdraw guilty pleas constituted an of his motion to withdraw guilty plea constituted an abuse of discretion and the trial court "chilled" his right to trial.

STATEMENT OF FACTS

On December 22, 1993, an information was filed alleging defendant had committed continuous sexual abuse upon his daughter (count 1); he was also

charged with two separate incidents of molestation (counts 2 and 3). Each of the three charges alleged violation of a position of trust

(Pen. Code, sect. 1203.066 (a) (9)). Defendant entered not guilty pleas and the case was set for trial.

A pretrial conference was conducted on January 31, 1994, before Judge Kalashian. Defendant was offered the mitigated term of six years' imprisonment. This plea indication was rejected.

On February 3, 1994, defendant filed a motion for an order permitting cross-examination of the victim as to her prior sexual conduct and for admission of evidence thereon. Although no ruling was entered on this motion, it appears that it was to be heard "in limine," which hearing was obviated by defendant's plea.

Prior to jury selection on February 9, 1994, a conference was held in chambers at which the trial judge, Howard Broadman, the prosecutor, Robert Dempsie, defendant and his counsel, Charles Rothbaum, were present. During this conference Judge Broadman informed defendant he would honor Judge Kalashian's plea indication. He also stated that "if the

case came down the way it was related to me," and defendant was found guilty on all charges he would "probably" be sentenced to the maximum term of imprisonment.

On February 10, 1994, defendant withdrew his notguilty plea and pled no contest to all counts and special allegations.

On March 29, 1994, defendant filed a motion to withdraw his no contest pela. Judge Broadman denied the motion after hearing on April 4, 1994.

Immediately thereafter, defendant was sentenced to six years' imprisonment on count 1; two-year terms were imposed for counts 2 and 3, to run concurrently with the term imposed for count 1.

DISCUSSION

Defendant argues the trial court abused its discretion by denying his motion to withdraw guilty plea because his free judgment was overridden by "judicial threat" that if he exercised his right to trial and was convicted of all charges he would be sentenced to the maximum possible term of imprisonment.

The foundational legal principles are well

established:

> " In considering the propriety of the denial of the motion to withdraw appellant's guilty plea, we preliminarily observe that a plea of guilty may be withdrawn at any time before judgment for good cause shown under the provisions of Penal Code section 1018. The granting or denial of an application to withdraw a guilty plea is within the discretion of the trial court after a consideration of all the factors necessary to bring about a just result; and the decision of the trial judge will not be disturbed on appeal unless an abuse thereof is clearly demonstrated. [Citations.] While the section is to be liberally construed and a plea of guilty may be withdrawn for mistake, ignorance, or indadvertence or any other factor overreching defendant's free and clear judgment, the facts of such grounds must be established by clear and convincing evidence." (People v. Waters (1975) 52 Cal.App.3d 323, 328, fn. omitted.)

Defendant's argument fails for two reasons. First, the record does not contain clear and convincing evidence that Judge Broadman directly or indirectly "threatened"

defendant to the maximum term of imprisonment if he insisted on trial. At the hearing on the motion to withdraw guilty plea, Judge Broadman stated that at the February 9, 1994, conference he "did not tell [defendant] that he was for sure going to get 17 years, four months." The court said, "In this case I'm confident that I told [defendant] if the case came down the way that it was related to me by the prosecution, that the most probable sentence would be that [defendant] was going to get something close to 17 years in prison." The court also stated that he did not know all the facts, just what he had been told by the prosectuor.[1]

It is important to note that in his declaration in support of the motion to withdraw guilty plea, Charles Rothbaum, defense counsel present at the conference, did not declare that Judge Broadman definitively stated defendant would receive the maximum term if convicted. Rather, Rothbaum declared that during this

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[1] Although we may have reservations about the propriety of the judge "testifying" to a material contested fact and simultan-eously resolving the very issue discussed, no objection was made at the hearing on the motion and no contention is made on appeal the procedure followed was wrong. There-fore, we need not discuss this point any further.

meeting "[t]he court explained the maximum possible sentence (in excess of seventeen years) under the law to [defendant]." Mere advisement by the court of the maximum sentence defendant faces is not erroneous. (See, e.g., People v. Spears (1984) 153 Cal.App.3d 79, 87.) When, as here, the evidence conflicts, the trial court's findings "cannot" be disturbed. (People v. James (1950) 99 Cal.App.2d 476, 483.)

Second, defendant's own statements at the hearing belie the contention that he pled guilty solely in response to an overwhelming fear he would receive the maximum sentence if he insisted upon his right to trial. His words clearly establish that on the evening of February 9th, he assessed the relative weakness of his defense in light of his attorney's opinion the court would not permit him to introduce evidence of the victim's prior sexual conduct and decided it was in his best interest to change his plea and accept a known six-year sentence. After counsel had argued, defendant and the court engaged in the following colloquy:

" THE DEFENDANT: Could I speak, Your Honor?

THE COURT: Go ahead.

THE DEFENDANT: From my standpoint, the night we are talking about, the night before the trial and everything, a big part of, I had come to understand, of my case was the sexual past of my daughter. And we were to have that hearing an hour before my opening statements were to start on our trial, the morning of my trial. The implication I received from my attorney was that you, in fact, were not gonna allow that evidence to go through, and that would have killed my case entirely. In other words, an hour before my trial started, I understand in my solitude that you were not going to allow a big portion of my evidence to be presented to the jury in my trial. And that was the reason I was afraid to take the 17 -- I thought I would get 17 years.

THE COURT: What made you think that?

THE DEFENDANT: That was what Mr. Rothbaum [his counsel] led me to believe, that you would not -- that sexual past of the child was not something that comes to court very much, and usually he didn't feel that you were in favor

of letting that before the jury. And to me it was like going to trial without having any evidence in my pocket.

THE COURT: See, that puts a whole chill on what you were really telling me before in the sense of why you were -- why you were wanting to withdraw your plea because you felt you were going to get the 17 years. And now I hear you telling me you wanted to withdraw your plea because you felt you were going to lose the motion.

THE DEFENDANT: Well, I'm just telling you that was one of the mitigating factors.

THE COURT: I appreciate your honesty, frankly.

THE DEFENDANT: Yes."

Further, in his declaration supporting the motion to withdraw guilty plea, defendant stated that he and his attorney had discussed the motion to permit cross-examination of the victim about her prior sexual history. He was concerned that if the court denied his motion to cross-examine his daughter about her prior sexual activity it "would unfairly prejudice my defense."

Thus, defendant himself provided the evidentiary

support for the trial court's determination he had made a rational decision to accept the plea bargain based on his perception of the weakness of his defense in light of counsel's opinion he would not be permitted to introduce evience of the victim's sexual conduct. Reliance on the advice of counsel doesn not provide a basis for withdrawal of the plea. (People v. Van Valkenburg (1952) 111 Cal.App.2d 337, 342.)

People v. Ingles (1989) 216 Cal.App.3d 1303 is somewhat illustrative. There, defendant sought to withdraw his guilty plea because he was afraid he would otherwise be incarcerated immediately. Since he was a former police officer, he feared for his safety. The motion was denied and the reviewing court affirmed, determining there had been no coercion. Rather, "defendant fully comprehended his options," and made an informed decision to accept the offered plea agreement. (Id. at pp. 1308-1309.)

Likewise here, the record does not demonstrate that the trial court abused its discretion by concluding defendant had not shown by clear and convincing evidence that his free judgment had been overwhelmed by a threat of maximum imprisonment if he exercised

his right to trial. "'There is nothing insidious about a plea agreement.'" (People v. Ingles, supra, 216 Cal.App.3d at p. 1309.) Defendant weighed his options and, based on his assessment of the weakness of his defense and the possible maximum sentence he could receive if convicted, chose to accept the plea indication. "We have considered defendant's claim of coercion and find in light of the testimony and findings that the court did not abuse its discretion in denying the motion to withdraw the plea of guilty." (Ibid.)

Equally unconvincing is defendant's argument that the court "chilled" his right to a jury trial by informing him that he would probably receive the maximum sentence if he was convicted on all charges and if the facts were as the prosecutor indicated them to be. A waiver of the right to jury trial is valid so long as it was voluntarily, knowingly and intelligently made, even though fear of the maximum sentence encouraged the waiver. (Brady v. United States (1970) 397 U.S. 742, 747-753.

DISPOSITION

The judgment is affirmed.

Buckley, J.

WE CONCUR:

Vartabedian, Acting P.J.

Thaxter, J.

APPENDIX "B"

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff and Respondent,	)	
v.	)	F021357
	)	(Superior Ct 34511)
KENNETH E. CAUDLE, JR., Defendant and Appellant.	)	O R D E R

Appellant's peititon for rehearing in the above entitled matter is denied.
Dated: April 6, 1995.

Buckley, J.

WE CONCUR:

Vartabedian, Acting P.J.

Thaxter, J.

APPENDIX "C"

Fifth Appellate District No F021397

S046253

IN THE SUPREME COURT OF CALIFORNIA

THE PEOPLE OF THE STATE OF CALIFORNIA,

Respondent,

v.

KENNETH E. CAUDLE, JR.,

Appellant.

JUNE 14, 1995

Appellant's petition for review DENIED.

LUCAS

Chief Justice